

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO**



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Natalie A. Jaresko
Executive Director

BY ELECTRONIC MAIL

June 12, 2019

The Honorable Ricardo A. Rosselló Nevares
Governor of Puerto Rico

The Honorable Thomas Rivera Schatz
President of the Senate of Puerto Rico

The Honorable Carlos J. Méndez Núñez
Speaker of the House of Representatives of Puerto Rico

Dear Governor Rosselló Nevares, President Rivera Schatz, and Speaker Méndez Núñez:

We write in response to the certification, dated June 3, 2019 and submitted pursuant to Section 204(a) of PROMESA, that Act 29-2019 is not significantly inconsistent with the Commonwealth's Fiscal Plan (the "Compliance Certification"), attached hereto as Exhibit 1. The Oversight Board concludes that the Compliance Certification for Act 29 failed to provide the formal estimate of the fiscal impact that the law will have, as required under paragraph (2)(A) of Section 204(a). Section 204(a)(2)(A) provides that a compliance certification shall include a "formal estimate . . . of the impact, if any, that the law will have on expenditures and revenues." The Compliance Certification is deficient in two ways.

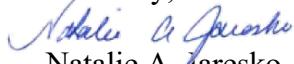
First, whatever fiscal impact that Act 29 will have will be determined to a significant degree by the PayGo actuarial projections for the years after fiscal year 2020. The Compliance Certification acknowledges that an actuarial study is underway but has not been completed. The Section 204(a)(2)(A) formal estimate cannot conclude that Act 29 is not significantly inconsistent with the Commonwealth Fiscal Plan without this actuarial study having been completed. In any event, the actuarial data currently available is sufficient to conclude that Act 29 is significantly inconsistent with the Commonwealth Fiscal Plan. Specifically, the latest data from the Government's own actuary, consistent with the last actuarial valuation report for ERS, estimates that total PayGo costs for municipalities amounts to over \$900 million for the period of fiscal years 2020 to 2024.

Second, the Compliance Certification does not provide an analysis of the impact that Act 29 will have on the Commonwealth's Fiscal Plan. The Compliance Certification does not identify the budgeted resources or the "other measures" that will purportedly cover the additional hundreds of millions of dollars associated with Act 29. Moreover, even if such budgeted resources are identified, their use would require reprogramming because the Commonwealth's Budget does not account for Act 29 and any reprogramming is subject to the Oversight Board concluding that such reprogramming "is not inconsistent with the Fiscal Plan and Budget" pursuant to Section 204(c)(1)-(2). The Compliance Certification also references vague "possible additional federal funding in Fiscal Year 2020" but does not identify it or explain its relevance to the conclusion of the Compliance Certification given that it is merely "possible" funding and it is limited to Fiscal Year 2020, not the duration of the Fiscal Plan. Yet the Compliance Certification goes on to certify that "Act 29 is not significantly inconsistent with the New Fiscal Plan for Puerto Rico." The Section 204(a) certification must include an analysis of the impact that Act 29 will have on the Commonwealth's Fiscal Plan before it can certify that the law is not significantly inconsistent with the Fiscal Plan.

Considering the foregoing, at this time the Oversight Board considers Act 29 to be significantly inconsistent with the Commonwealth Fiscal Plan. Accordingly, the Oversight Board is notifying you, pursuant to Section 204(a)(3)(A), that the formal estimate required by Section 204(a)(2)(A) is missing, and directing you, pursuant to Section 204(a)(4)(A), to provide (i) the missing estimate within seven (7) business days and (ii) an amended Compliance Certification reflecting such estimates. In order for the formal estimate required by Section 204(a)(2)(A) to be complete, it must (i) identify specifically the "budgeted resources" and "other measures" that will purportedly cover the additional hundreds of millions of dollars associated with Act 29 for the duration of the Fiscal Plan, (ii) explain why the use of such "budgeted resources" and "other measures" is consistent with the Fiscal Plan, (iii) identify specifically the "possible additional federal funding in Fiscal Year 2020," and (iv) explain its relevance to the conclusion of the Compliance Certification in light of the fact that it is only "possible" and limited to just Fiscal Year 2020.

Should the Oversight Board determine that you have failed to comply with our directive under Section 204(a)(4)(A), we reserve the right to take such actions as we consider necessary, consistent with Section 204(a)(5), including preventing the enforcement or application of Act 29.

Sincerely,


Natalie A. Jaresko

Andrew G. Biggs
José B. Carrión
Carlos M. García
Arthur J. González
José R. González
Ana J. Matosantos
David A. Skeel, Jr.

CC: Christian Sobrino Vega



Compliance Certificate of New Joint Resolution Pursuant to 48 U.S.C. §2144(2)(B)

Legislative Measure Number:

- Act No. 29-2019 ("Act 29"), herein attached.

Title of the Legislative Measure:

- To establish the "Act for Reductions of the Administrative Burdens of the Municipalities", for purposes of reducing the administrative burden of the municipalities concerning the fees they pay for the government health plan and the "Pay as you Go" system; to amend Section 9 of Article VI of the "Puerto Rico Health Insurance Administration Act", Act 72-1993, as amended, and Article 3.5 of the "Act to Guarantee the Payment of Pension Benefits to our Retirees and to Establish a New Defined Contribution Plan for Public Employees", Act 106-2017, as amended, to make viable the reduction of such burdens; and for other related purposes.

Impact of the Legislative Measure on Fiscal Plan:

- Act 29 establishes the reduction of administrative burdens of the municipalities in connection with their payments to the health plan of the Government of Puerto Rico and the "Pay as you Go" system.
- Historically, the municipalities have carried partial responsibility for the payment of the health plan of the Government in order to cover the need for health services. This structure was designed decades ago taking into consideration that, at that time, municipalities provided health services later assumed by the Central Government.
- Notwithstanding the foregoing, it should be noted that providing health services to the citizens of Puerto Rico under the State Medicaid Plan is a responsibility of the Central Government. This is also the standard nationwide.
- The reality is that the municipalities have been able to cover the payment of the health plan of the Government because of the direct payments they received in the past from the Central Government.
- Given that the municipalities face reductions and elimination of the direct payments they receive from the Central Government, as provided in the Fiscal Plan, Act 29 sets forth the mechanism for the Central Government to assume its obligations in accordance with current law (ie. guarantee Pay-Go payments pursuant to Article 1.4 of Act 106-2017).
- Based on the foregoing, the Government in its budget has taken into consideration the costs of assuming its responsibility of providing health services to the citizens of Puerto Rico. Furthermore, funding could also be provided through any upcoming legislation at the federal level for the provision of additional federal funding.



- As for the payments to the "Pay as you Go" system, it should be noted that the municipalities are government institutions whose powers are mostly determined by law. Therefore, the Legislative Assembly also has the power to determine by law which burdens will be imposed on the municipalities. It is in the exercise of such powers that the Legislative Assembly enacted this Act.
- Furthermore, the Government in its budget has taken into consideration the costs of assuming the payments to the "Pay as you Go" system.
- Pursuant to Act 106-2017, the General Fund guarantees the Pay-Go payments, so the total amount of such payments is budgeted and has to be collected regardless of the Pay-Go payments made by the municipalities.
- For the reasons stated above, Act 29 has no incremental impact on the New Fiscal Plan for Puerto Rico.

Estimate of Impact of the Legislative Measure on Expenditures and Revenues:

- Act 29 has an impact on the budget of the Health Insurance Administration ("ASES", for its Spanish acronym) of approximately \$119.7 million for Fiscal Year 2020, and \$161.6 million for each fiscal year from 2021 to 2024.
- As for the "Pay as you Go" system, Act 29 has an impact of approximately \$166 million for Fiscal Year 2020. An actuarial study has been requested to determine the impact on expenditures for subsequent fiscal years.
- Notwithstanding the foregoing, said impact will not be incremental, because these expenditures will be covered using budgeted resources and other measures in response to possible additional federal funding in Fiscal Year 2020, and are already required expenditures under the Pay-Go framework set forth in Act 106-2017.

Determination of the Legislative Measure's Compliance with the Fiscal Plan:

- Act 29 is not significantly inconsistent with the New Fiscal Plan for Puerto Rico.

Conclusion:

- For the reasons stated before, Act 29 complies with the requirements set forth in 48 U.S.C. §2144(2)(B).